



Legal Avenues

Your Road to Solutions

Sharpen Your Negotiation Skills



Usually an attorney has a general idea of how a case will conclude. Negotiation, rather than litigation, can be a tool to bring a case to conclusion more quickly with less acrimony.

Listen Attentively

When negotiating, focus on listening to the other side's requests and responses, rather than planning your side's response while the other side is communicating its view. It is easy to miss important facts and nonverbal cues when not being attentive to the other side's presentation.¹ Responding with a summary of the other side's proposal is one way to emphasize that you have listened to their proposal and seriously evaluated it before introducing your counterproposal.²

Listening and showing empathy can build rapport and trust with the other side, which may lead to more serious consideration when your side makes a recommendation on how to address a problem.³

Defining the substantive issues and separating them from the emotional issues of the parties can contribute to productive negotiations. The emotional issues will still need to be dealt with, but this should be done separately from the negotiations over the substantive issues.⁴

Work with both parties to concentrate on meeting their needs as much as possible through negotiation rather than pursuing punishment of the other party.⁵

Innovate

Improvisation can be a useful tool. The negotiator should have possible alternatives when starting negoti-

ations, but should be able to create a new alternative when unexpected information emerges.⁶

Work for a Win-Win Outcome

Structured negotiations involve both sides working together to solve a problem. For example, these types of negotiations have been used to improve access for the blind at bank ATM machines. Early ATM machines lacked audio prompts to make them accessible to the visually impaired. This was brought to the attention of banks through a demand letter with the attorneys referring to the rights guaranteed by the Americans with Disabilities Act. Adaptation of the ATMs was the focus of the negotiations rather than monetary relief and the banks invited members of the blind community to work with them in developing cost-effective technology to make the ATMs accessible.⁶

Negotiations where there is a win-win outcome result in both parties seeing that some of their objectives have been attained and there is a positive feeling about the process. Parties are more likely to continue a relationship that both sides see as beneficial.

To achieve win-win outcomes try not to limit negotiations to one issue. For example, incorporate issues other than price so that one business does not feel that it is making all of the concessions. Also, look for implicit issues that need to be addressed, such as trust, respect, and recognition. Open ended questions can be useful in discovering what those needs are.⁸

When concluding the negotiations, try to prepare the summary of the terms immediately and reinforce with the client the beneficial elements of the agreement.

By Kendel Croston, MLS
Stark County Law Library
krcroston@starklawlibrary.org

Footnotes

¹Herman, Gregg. *Settlement Negotiation Techniques in Family Law: A Guide to Improved Tactics and Resolution*, 9-10.

²Camson, Josh. "Learning Negotiation from an FBI Agent," *Lawyerist.com*, 4 September 2013, <http://lawyerist.com/learning-negotiation-fbi-agent/>, accessed 11 April 2014.

³Ibid.

⁴Herman, 8-9.

⁵Ibid., 10.

⁶Program on Negotiation Staff, "Interview with Michael Wheeler: The Art of Negotiation" Program on Negotiation, Harvard Law School, Daily Blog, 12 November 2013, <http://www.pon.harvard.edu/daily/negotiation-skills-daily/interview-with-michael-wheeler-the-art-of-negotiation/>, accessed 11 April 2014.

⁷Cohen, Deborah L. "Working Win-Win: 2 Lawyers Find Settlements on the Path of Least Resistance" 99 *ABA Journal* 32 (December 2013) also available at: http://www.abajournal.com/magazine/article/2_lawyers_find_settlements_on_the_path_of_least_resistance/, accessed 11 April 2014.

⁸Raasch, Janet Ellen. "Win-Win Negotiation Skills for Lawyers: The Art of Getting What You Both Want" *CBA PracticeLink*, <http://www.cba.org/cba/practicelink/wwp/negotiation.aspx>, accessed 11 April 2014.